

STATE OF MICHIGAN
COURT OF APPEALS

FREDERICK MOREHEAD,

Plaintiff-Appellant,

v

CAROLYN L. HOFFDAL,

Defendant-Appellee.

UNPUBLISHED

September 25, 1998

No. 201019

Oakland Circuit Court

LC No. 81-217249 DM

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Plaintiff appeals by delayed leave granted the order of the circuit court denying his motion to quash an income withholding order. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties were divorced pursuant to a default judgment of divorce entered May 20, 1981. The judgment provided that plaintiff was to pay child support until the youngest child reached the age of majority. That event occurred on June 5, 1985. By that time, plaintiff had accrued a substantial child support arrearage. Plaintiff avoided making payments on this obligation, with the exception of two income tax refund intercepts in 1992 and 1993.

Defendant obtained a mandatory income withholding order from the circuit court on April 18, 1996. Plaintiff moved to quash, asserting that the ten-year statute of limitations period had run on the support obligation. The trial court denied plaintiff's motion, and this Court granted his delayed application for leave to appeal.

In *Ewing v Bolden*, 194 Mich App 95; 486 NW2d 96 (1992), this Court found that the ten-year statute of limitations period is applicable to an action to collect a child support arrearage. MCL 600.5809(3); MSA 27A.5809(3).¹ The Court noted that a party may renew a divorce judgment anytime within the limitations period to avoid the application of the ten-year bar. *Ewing, supra* at 102.

In *Alpena Friend of the Court ex rel Paul v Durecki*, 195 Mich App 635; 491 NW2d 864 (1992), the Court found that partial payments made on an arrearage waive the statute of limitations

defense. The payment provides acknowledgment of the continuing vitality of the debt and waives the defense of the statute of limitations. *Id.* at 638. The Court found that the respondent's argument that the payments were involuntary was without legal or factual merit. *Id.* at 639. Plaintiff's claim that his partial payments in 1992 and 1993 were involuntary is similarly without merit. Successful actions taken to collect on the judgment within the limitations period waive the statute of limitations defense without regard to the consent of the opposing party.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh

¹ The statute has subsequently been amended to specifically adopt this provision for child support actions. MCL 600.5809(4); MSA 27A.5809(4).